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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-191177

DATE: March 8, 1978

MATTER OF:

J.W. Creech Inc.

DIGEST:

Where evidence establishes that bidder mistakenly omitted item in computing its bid but does not establish intended bid, agency properly permitted bidder to withdraw but not correct its bid.

J. W. Creech Inc. (Creech) protests the determination of the Veterans Administration (VA) to permit withdrawal but not correction of its bid for an asserted error in its bid discovered prior to award. Creech sought a \$110,000 upward adjustment of its bid, consisting of \$106,000 for a steel deck asserted to have been omitted from its bid, and \$4,000 for additional bonding, overhead and profit because of the omission.

Bids under an invitation for bids (IFB) for a 120 bed nursing home care unit at the VA Center, Hampton, Virginia, VA project no. 590-050 were received on December 15, 1977 as follows:

| | |
|--------------------------|-------------|
| J.W. Creech Inc. | \$4,422,000 |
| Leon H. Perlin Co., Inc. | 4,580,000 |

The balance of the bids received ranged upwards to \$4,868,000. After correction to \$4,532,000 as requested, the Creech bid would remain low by \$48,000.

Our examination of the worksheets submitted in support of the protest shows that Creech included in its bid price \$444,378 for the steel work in question, which is asserted to be based on its subcontractor bids received as follows:

| | |
|------------------------------------|----------------|
| Barnum Bruns Iron Works, Inc. | \$457,990 |
| Cost of steel erection deducted | <u>107,232</u> |
| | 350,758 |
| American Erection (steel erection) | <u>93,000</u> |
| Total | \$443,758 |

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Creech claims it rounded the above total to \$444,000 and added \$378.00 for "non-shrink grouting" (to be supplied by Creech) for the total of \$444,378 used in the calculation of its bid. Creech claims that it also had in its possession, at the time the final bid was prepared, a bid from Liphart Steel in the amount of \$550,000 which included the steel deck and the cost of steel erection. The \$106,000 increase is the difference between the \$444,378 used in calculating the bid, and the \$550,000 Liphart Steel bid (plus \$378.00 for non-shrink grouting). Creech claims that in the rush to complete the bid (the Barnum Bruns price was asserted to have been received only one half hour before bid opening), the estimator failed to note that the Barnum Bruns bid did not include the price of the steel deck. "Had this qualification been duly noted at the time," Creech claims, "the Barnum Bruns bid would have been laid aside, and reliance would have been placed instead on the Liphart Steel quotation * * *."

The VA offers several other possibilities which Creech could have considered in arriving at the steel cost for the project. Inasmuch as Creech had determined that it could obtain the steel erection service from American Erection for \$93,000, the VA postulates that Creech could have contacted Liphart "to obtain deducts on the erection of the structural steel" and use the service of American Erection as it had originally intended, or that Creech could have obtained a quote for the steel deck and added it to the bid. Thus, in the view of the VA, there were other alternatives available to Creech besides merely using the Liphart bid, and the evidence presented as to the actual intended bid was not considered clear and convincing as required by Federal Procurement Regulations (FPR) 1-2.406-3(a)(3) (1964 ed. amend. 165.)

Although Creech disputes the availability of these alternatives because of the time periods involved, we conclude that there was a reasonable basis for the VA's conclusion. The authority to correct mistakes alleged after bid opening but prior to award has been delegated to the procuring agency and the weight to be given to the evidence in support of an alleged mistake is a

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question of fact to be considered by the administratively designated evaluator of evidence, whose decision will not be disturbed by this Office unless there is no reasonable basis for the decision. 53 Comp. Gen. 232 (1973).

Moreover, from the record, it is clear that the Liphart bid was never considered by Creech in the calculation of its bid, and whether it would or would not have used the Liphart bid, had its estimator noted the exception in the Barnum Bruns bid relating to the steel deck, is beside the point. The rule allowing bid correction does not extend to situations where the bidder discovers the omission of a factor after bids are opened. See Columbus Building and Supply Co., B-188477, August 2, 1977, 77-2 CPD 70. As we said in Columbus, supra, "[t]he basic rule was stated by us in 37 Comp. Gen. 650, 652 (1958):

" * * * bids may not be changed after they are opened, and the exception permitting a bid to be corrected upon sufficient facts establishing that the bidder actually intended to bid an amount other than that set down on the bid form * * * does not extend to permitting a bidder to recalculate and change his bid to include factors which he did not have in mind when his bid was submitted. [T]o permit this would reduce to a mockery the procedure of competitive bidding required by law in the letting of public contracts. See 17 Comp. Gen. 575, 577."

Finally, we note that if correction were permitted, the Creech bid would be only about 1% lower than the Perlin bid. In this regard we have held that:

"The correction of mistakes in bid has always been a vexing problem. It has been argued that bid correction after bid opening and disclosure of prices quoted compromises the integrity of the competitive bidding system, and, to some extent at least, this is true. For this reason, it has been advocated that the Government should adopt a policy which would permit

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contractors to withdraw, but not to correct, erroneous bids. We do not agree completely with this position, since we believe there are cases in which bid correction should be permitted. We do agree, that, regardless of the good faith of the party * * * correction should be denied in any case in which there exists any reasonable basis for argument that public confidence in the integrity of the competitive bidding system would be adversely affected thereby * * *." 49 Comp. Gen. 748, 750 (1969).

In accord with that rationale, we have concurred with agency determinations not to allow correction when a bid as corrected would come so close to the next lowest bid so as to bring the case within the quoted rule. See Asphalt Construction, Inc., 55 Comp. Gen. 742 (1976), 76-1 CPD 82; Broken Lance Enterprises, Inc., 56 Comp. Gen. 1 (1976), 76-2 CPD 314.

The protest is denied.

R. F. Kellum
Deputy Comptroller General
of the United States